

1 MARC A. GOLDBACH (SBN 139318)
2 marc.goldbach@goldbachlaw.com
3 Goldbach Law Group
4 6528 Greenleaf Avenue, Suite 210
5 Whittier, CA 90601
6 Telephone: (562) 696 -0582
7 Facsimile: (888) 771-5425

8 Attorney for Plaintiff
9 ROSEMARIE BRYANT

10 STEVEN L. FRIEDLANDER (SBN 154146)
11 ERIC G. RUEHE (SBN 284568)
12 SV EMPLOYMENT LAW FIRM PC
13 160 Bovet Road, Suite 401
14 San Mateo, CA 94402
15 Telephone: (650) 265-0222
16 Facsimile: (650) 265-0223
17 Email: sfriedlander@svelf.com
eruehe@svelf.com

18 Attorneys for Defendant
19 THE MITRE CORPORATION

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22 WESTERN DIVISION

23 ROSEMARIE BRYANT,

24 Plaintiff,

25 vs.

26 THE MITRE CORPORATION and DOES 1
27 through 50, inclusive,

28 Defendants.

Case No. 2:13CV8884 CAS JCGx

[PROPOSED] PROTECTIVE ORDER

29
30 **THIS PROTECTIVE ORDER IS HEREBY ENTERED IN THE ABOVE-**
31 **CAPTIONED MATTER.**

32
33 **1. PURPOSES AND LIMITATIONS**

34 Disclosure and discovery activity in this action are likely to involve production of
35 confidential, proprietary, or private information for which special protection from public

1 disclosure and from use for any purpose other than prosecuting this litigation may be
2 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
3 following Stipulated Protective Order. The parties acknowledge that this Order does not
4 confer blanket protections on all disclosures or responses to discovery and that the
5 protection it affords from public disclosure and use extends only to the limited
6 information or items that are entitled to confidential treatment under the applicable legal
7 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
8 Stipulated Protective Order does not entitle them to file confidential information under
9 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the
10 standards that will be applied when a party seeks permission from the court to file
11 material under seal.

12 The parties further acknowledge that if classified government information becomes
13 the subject of discovery in this matter, the applicable laws and regulations for such
14 information will apply, irrespective of this Stipulated Protective Order, and this Stipulated
15 Protective Order is entered into without any waiver of any rights or protections regarding
16 such information.

17 2. DEFINITIONS

18 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
19 information or items under this Order.

20 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it
21 is generated, stored or maintained) or tangible things that qualify for protection under
22 Federal Rule of Civil Procedure 26(c).

23 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
24 (as well as their support staff).

25 2.4 Designating Party: a Party or Non-Party that designates information or items
26 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

27 2.5 Disclosure or Discovery Material: all items or information, regardless of the
28 medium or manner in which it is generated, stored, or maintained (including, among other

1 things, testimony, transcripts, and tangible things), that are produced or generated in
2 disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
5 expert witness or as a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action. House
7 Counsel does not include Outside Counsel of Record or any other outside counsel.

8 2.8 Non-Party: any natural person, partnership, corporation, association, or other
9 legal entity not named as a Party to this action.

10 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
11 this action but are retained to represent or advise a party to this action and have appeared
12 in this action on behalf of that party or are affiliated with a law firm which has appeared
13 on behalf of that party.

14 2.10 Party: any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and Outside Counsel of Record (and their
16 support staffs).

17 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this action.

19 2.12 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or
21 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
22 their employees and subcontractors.

23 2.13 Protected Material: any Disclosure or Discovery Material that is designated
24 as “CONFIDENTIAL.”

25 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from
26 a Producing Party.

27 3. SCOPE

28 The protections conferred by this Stipulation and Order cover not only Protected

1 Material (as defined above), but also (1) any information copied or extracted from
2 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
3 Material; and (3) any testimony, conversations, or presentations by Parties or their
4 Counsel that might reveal Protected Material. However, the protections conferred by this
5 Stipulation and Order do not cover the following information: (a) any information that is
6 in the public domain at the time of disclosure to a Receiving Party or becomes part of the
7 public domain after its disclosure to a Receiving Party as a result of publication not
8 involving a violation of this Order, including becoming part of the public record through
9 trial or otherwise; and (b) any information known to the Receiving Party prior to the
10 disclosure or obtained by the Receiving Party after the disclosure from a source who
11 obtained the information lawfully and under no obligation of confidentiality to the
12 Designating Party. Any use of Protected Material at trial shall be governed by a separate
13 agreement or order.

14 **4. DURATION**

15 Even after final disposition of this litigation, the confidentiality obligations imposed
16 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
17 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
18 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
19 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,
20 trials, or reviews of this action, including the time limits for filing any motions or
21 applications for extension of time pursuant to applicable law.

22 **5. DESIGNATING PROTECTED MATERIAL**

23 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
24 Party or Non-Party that designates information or items for protection under this Order
25 must take care to limit any such designation to specific material that qualifies under the
26 appropriate standards. The Designating Party must designate for protection only those
27 parts of material, documents, items, or oral or written communications that qualify – so
28 that other portions of the material, documents, items, or communications for which

protection is not warranted are not swept unjustifiably within the ambit of this Order.
Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page that contains Protected Material. If only a portion or portions of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

3 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
4 the Designating Party identify on the record, before the close of the deposition, hearing, or
5 other proceeding, all protected testimony.

6 (c) for information produced in some form other than documentary and for any
7 other tangible items, that the Producing Party affix in a prominent place on the exterior of
8 the container or containers in which the information or item is stored the legend
9 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
10 protection, the Producing Party, to the extent practicable, shall identify the protected
11 portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
13 to designate qualified information or items does not, standing alone, waive the
14 Designating Party’s right to secure protection under this Order for such material. Upon
15 timely correction of a designation, the Receiving Party must make reasonable efforts to
16 assure that the material is treated in accordance with the provisions of this Order.

17 5.4 Receiving Party’s Right to Designate. If a Receiving Party receives
18 documents that the Receiving Party believes are confidential, but were not marked as
19 confidential by the Producing Party, the Receiving Party may designate such documents
20 as “CONFIDENTIAL.” The Receiving Party who so designates such documents shall
21 bear the burden of affixing legends to affected documents, as required by Section 5.2,
22 with the cooperation of the Producing Party.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
25 of confidentiality at any time. Unless a prompt challenge to a Designating Party’s
26 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
27 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
28

1 Party does not waive its right to challenge a confidentiality designation by electing not to
2 mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
4 process by providing written notice of each designation it is challenging and describing
5 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made,
6 the written notice must recite that the challenge to confidentiality is being made in
7 accordance with this specific paragraph of the Protective Order. The parties shall attempt
8 to resolve each challenge in good faith and must begin the process by conferring directly
9 (in voice to voice dialogue; other forms of communication are not sufficient) within 14
10 days of the date of service of notice. In conferring, the Challenging Party must explain the
11 basis for its belief that the confidentiality designation was not proper and must give the
12 Designating Party an opportunity to review the designated material, to reconsider the
13 circumstances, and, if no change in designation is offered, to explain the basis for the
14 chosen designation. A Challenging Party may proceed to the next stage of the challenge
15 process only if it has engaged in this meet and confer process first or establishes that the
16 Designating Party is unwilling to participate in the meet and confer process in a timely
17 manner.

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
19 intervention, the Designating Party shall file and serve a motion to retain confidentiality
20 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
21 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing
22 that the meet and confer process will not resolve their dispute, whichever is earlier. Each
23 such motion must be accompanied by a competent declaration affirming that the movant
24 has complied with the meet and confer requirements imposed in the preceding paragraph.
25 Failure by the Designating Party to make such a motion including the required declaration
26 within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
27 designation for each challenged designation. In addition, the Challenging Party may file a
28 motion challenging a confidentiality designation at any time if there is good cause for

1 doing so, including a challenge to the designation of a deposition transcript or any
2 portions thereof. Any motion brought pursuant to this provision must be accompanied by
3 a competent declaration affirming that the movant has complied with the meet and confer
4 requirements imposed by the preceding paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the
6 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
7 harass or impose unnecessary expenses and burdens on other parties) may expose the
8 Challenging Party to sanctions. Unless the Designating Party has waived the
9 confidentiality designation by failing to file a motion to retain confidentiality as described
10 above, all parties shall continue to afford the material in question the level of protection to
11 which it is entitled under the Producing Party's designation until the court rules on the
12 challenge.

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is
15 disclosed or produced by another Party or by a Non-Party in connection with this case
16 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
17 Material may be disclosed only to the categories of persons and under the conditions
18 described in this Order. When the litigation has been terminated, a Receiving Party must
19 comply with the provisions of section 13 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a location
21 and in a secure manner that ensures that access is limited to the persons authorized under
22 this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
24 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
25 may disclose any information or item designated "CONFIDENTIAL" only to:
26 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees
27 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
28

1 information for this litigation and who have signed the “Acknowledgment and Agreement
2 to Be Bound” that is attached hereto as Exhibit A;

3 (b) the officers, directors, and employees (including House Counsel) of the
4 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
5 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
7 reasonably necessary for this litigation and who have signed the “Acknowledgment and
8 Agreement to Be Bound” (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants, mock
11 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
12 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
13 (Exhibit A);

14 (f) during their depositions, witnesses in the action to whom disclosure is
15 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
16 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
17 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
18 Protected Material must be separately bound by the court reporter and may not be
19 disclosed to anyone except as permitted under this Stipulated Protective Order.

20 (g) the author or recipient of a document containing the information or a custodian
21 or other person who otherwise possessed or knew the information.

22 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation that
25 compels disclosure of any information or items designated in this action as
26 “CONFIDENTIAL,” that Party must:

27 (a) promptly notify in writing the Designating Party. Such notification shall
28 include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to issue
 2 in the other litigation that some or all of the material covered by the subpoena or order is
 3 subject to this Protective Order. Such notification shall include a copy of this Stipulated
 4 Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 6 Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with the
 8 subpoena or court order shall not produce any information designated in this action as
 9 “CONFIDENTIAL” before a determination by the court from which the subpoena or
 10 order issued, unless the Party has obtained the Designating Party’s permission. The
 11 Designating Party shall bear the burden and expense of seeking protection in that court of
 12 its confidential material – and nothing in these provisions should be construed as
 13 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
 14 from another court.

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
 16 THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a Non-Party
 18 in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
 19 Parties in connection with this litigation is protected by the remedies and relief provided
 20 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party
 21 from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to produce a
 23 Non-Party’s confidential information in its possession, and the Party is subject to an
 24 agreement with the Non-Party not to produce the Non-Party’s confidential information,
 25 then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-Party that
 27 some or all of the information requested is subject to a confidentiality
 28 agreement with a Non-Party;

- (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and
- (3) make the information requested available for inspection by the Non-Party.

If the Non-Party fails to object or seek a protective order from this court within receiving the notice and accompanying information, the Receiving Party may Non-Party's confidential information responsive to the discovery request. If Party timely seeks a protective order, the Receiving Party shall not produce any in its possession or control that is subject to the confidentiality agreement n-Party before a determination by the court. Absent a court order to the e Non-Party shall bear the burden and expense of seeking protection in this

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-

1 discovery order that provides for production without prior privilege review. Pursuant to
2 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
3 effect of disclosure of a communication or information covered by the attorney-client
4 privilege or work product protection, the parties may incorporate their agreement in the
5 stipulated protective order submitted to the court.

6 **12. MISCELLANEOUS**

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this
10 Protective Order no Party waives any right it otherwise would have to object to disclosing
11 or producing any information or item on any ground not addressed in this Stipulated
12 Protective Order. Similarly, no Party waives any right to object on any ground to use in
13 evidence of any of the material covered by this Protective Order.

14 12.3 Filing Protected Material. Without written permission from the Designating
15 Party or a court order secured after appropriate notice to all interested persons, a Party
16 may not file in the public record in this action any Protected Material. A Party that seeks
17 to file under seal any Protected Material must comply with Civil Local Rule 79-5.
18 Protected Material may only be filed under seal pursuant to a court order authorizing the
19 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a
20 sealing order will issue only upon a request establishing that the Protected Material at
21 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under
22 the law. If a Receiving Party's request to file Protected Material under seal pursuant to
23 Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the
24 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise
25 instructed by the court.

26 **13. FINAL DISPOSITION**

27 Within 60 days after the final disposition of this action, as defined in paragraph 4,
28 each Receiving Party must return all Protected Material to the Producing Party or destroy

1 such material. As used in this subdivision, “all Protected Material” includes all copies,
2 abstracts, compilations, summaries, and any other format reproducing or capturing any of
3 the Protected Material. Whether the Protected Material is returned or destroyed, the
4 Receiving Party must submit a written certification to the Producing Party (and, if not the
5 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
6 (by category, where appropriate) all the Protected Material that was returned or destroyed
7 and (2)affirms that the Receiving Party has not retained any copies, abstracts,
8 compilations, summaries or any other format reproducing or capturing any of the
9 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
10 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
11 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
12 work product, and consultant and expert work product, even if such materials contain
13 Protected Material. Any such archival copies that contain or constitute Protected Material
14 remain subject to this Protective Order as set forth in Section 4 (DURATION).

15
16 **IT IS SO ORDERED.**

17
18 DATED: May 2, 2014



19 Hon. Jay C. Gandhi
20 United States District Court
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the Central District of
6 California on [date] in the case of *Rosemarie Bryant v. The MITRE Corporation*, Case No. 2:13CV8884
7 CAS JCGx. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
8 and I understand and acknowledge that failure to so comply could expose me to sanctions and
9 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any
10 information or item that is subject to this Stipulated Protective Order to any person or entity except in
11 strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Central
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if
14 such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as my
17 California agent for service of process in connection with this action or any proceedings related to
18 enforcement of this Stipulated Protective Order.

20 Date: _____

21 City and State where sworn and signed: _____

23 Printed name: _____